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THIS IS AN UNREPORTED PANEL DECISION OF THE **COMMONWEALTH** COURT. AS SUCH, IT MAY BE CITED FOR ITS PERSUASIVE VALUE, BUT NOT AS BINDING PRECEDENT. SEE SECTION 414 OF THE **COMMONWEALTH** COURT'S INTERNAL OPERATING PROCEDURES.

**Commonwealth** Court of **Pennsylvania**.

David A. **HOLLABAUGH**, Appellant

v.

**COMMONWEALTH** of **Pennsylvania**,  
DEPARTMENT OF **TRANSPORTATION**,  
**BUREAU** OF **DRIVER LICENSING**.

No. 1419 C.D.2009. | Submitted Feb.  
26, **2010**. | Decided April 13, **2010**.

BEFORE: **JUBELIRER**, Judge, and **LEAVITT**, Judge, and **FRIEDMAN**, Senior Judge.

#### MEMORANDUM OPINION

**FRIEDMAN**, Senior Judge.

\*1 David A. **Hollabaugh** (Licensee) appeals from the July 13, 2009, order of the Court of Common Pleas of Centre County (trial court), which affirmed a decision of the **Commonwealth** of **Pennsylvania**, Department of **Transportation, Bureau** of **Driver Licensing** (DOT) to disqualify Licensee from driving a commercial motor vehicle for one year pursuant to section 1611(a) of the Vehicle Code.<sup>1</sup> We affirm.

Licensee, who has a commercial **driver's license** (CDL), was convicted of driving under the influence of alcohol (DUI) in violation of section 3802(a)(1) of the Vehicle Code.<sup>2</sup> As a result of the conviction, DOT disqualified Licensee from driving a commercial motor vehicle for one year. DOT did not suspend Licensee's non-commercial operating privileges.<sup>3</sup>

Licensee appealed to the trial court, arguing that the legislature could not have intended to suspend a person's CDL for DUI when the person's non-commercial **driver's**

**license** is not suspended. The trial court disagreed, noting that this issue was addressed in *Thorek v. Department of Transportation, Bureau of Driver Licensing*, 938 A.2d 505, 512 (Pa.Cmwlth.2007), *appeal denied*, 597 Pa. 724, 951 A.2d 1168 (2008) (emphasis added), as follows:

The greater harm that can be caused by commercial vehicles justifies the imposition of harsher sanctions, including subjecting a commercial vehicle licensee to harsher sanctions the first time that he drives any vehicle under the influence of alcohol. It is not unreasonable for a legislative body also to suppose that a **person who operates any automobile under the influence of alcohol is at greater risk to repeat this conduct in a commercial vehicle**, which is capable of horrific destruction on **Pennsylvania's** highways.

Thus, the trial court affirmed DOT's disqualification of Licensee from driving a commercial motor vehicle for one year. Licensee now appeals to this court.

Licensee argues that section 1611(a) of the Vehicle Code violates his equal protection rights because a first-time DUI offender without a CDL receives no penalty, but a first-time DUI offender with a CDL, like Licensee, is disqualified from driving a commercial motor vehicle for one year.

Licensee recognizes that, in *Thorek*, this court held that the greater penalty for CDL holders does not violate their equal protection rights. However, Licensee questions the reasonableness of this court's statement that "a person who operates any automobile under the influence of alcohol is at greater risk to repeat this conduct in a commercial vehicle." *Thorek*, 938 A.2d at 512. Licensee asserts that there are no studies showing "if a person [with a CDL] drinks and drives in a noncommercial vehicle that [he or she is] more likely to drink and drive in a commercial vehicle." (Licensee's brief at 7–8.) Licensee further asserts that it is not reasonable to believe that a CDL holder with a first-time DUI conviction is more dangerous to society than the holder of a non-commercial **driver's license** with a first-time DUI conviction. (Licensee's brief at 8–9.)

\*2 However, in making his argument, Licensee ignores the actual reason set forth in *Thorek* for the imposition of harsher

sanctions for CDL holders, i.e., the reduction of commercial vehicle accidents. This court, relying on *Department of Transportation, Bureau of Traffic Safety v. Huff*, 310 A.2d 435 (Pa.Cmwlth.1973), stated that “much greater harm to person and property can be done by a commercial vehicle and, therefore, it was not arbitrary to subject commercial vehicle licensees to harsher sanctions than are imposed upon those licensed to operate automobiles.” *Thorek*, 938 A.2d at 512. Licensee does not dispute that much greater harm to person and property can be done by a commercial vehicle involved in an accident.

Accordingly, we affirm.

**ORDER**

AND NOW, this 13th day of April, 2010, the order of the Court of Common Pleas of Centre County, dated July 13, 2009, is hereby affirmed.

Footnotes

- 1 75 Pa.C.S. § 1611(a). Section 1611(a) of the Vehicle Code provides that, upon receiving a report of conviction for a first violation of section 3802 of the Vehicle Code, 75 Pa.C.S. § 3802 (relating to driving under the influence of alcohol), DOT shall disqualify any person from driving a commercial motor vehicle for a period of one year where the person was a commercial driver at the time of the violation. See *Wagner v. Department of Transportation, Bureau of Driver Licensing*, 931 A.2d 104 (Pa.Cmwlth.2007) (pointing out that, by definition, a commercial driver is one who either drives a commercial motor vehicle or is the holder of a commercial driver's license).
- 2 75 Pa.C.S. § 3802(a)(1).
- 3 Under section 3804(e)(2)(iii) of the Vehicle Code, 75 Pa.C.S. § 3804(e)(2)(iii), there shall be no suspension of non-commercial operating privileges for an ungraded misdemeanor under section 3802(a) of the Vehicle Code where: (1) the person has no prior offense; and (2) the person is subject to the penalties set forth in section 3804(a) of the Vehicle Code, 75 Pa.C.S. § 3804(a) (requiring a first-time offender to receive a sentence of six months probation, a \$300 fine, highway safety school and an alcohol addiction assessment).